

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

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DISPATCHED BY

Docket No. 92-312 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8137
Table of Allotments,
FM Broadcast Stations.
(Walhalla, North Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 17, 1992; Released: January 13, 1993

Comment Date: March 5, 1993

Reply Comment Date: March 22, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Roger A. and Kathryn Ann Anderson ("petitioners") requesting the allotment of Channel 294C2 to Walhalla, North Dakota, as the community's first local FM service.¹ Petitioners state that they will apply for the channel, if allotted.²

2. We believe the public interest would be served by proposing the allotment of Channel 294C2 to Walhalla since an interest has been expressed in providing the community with its first local FM service. Channel 294C2 can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (16.3 miles) west to avoid short-spacings to unoccupied and unapplied-for Channels 292C and 296C, Winnipeg, Manitoba, and Channel 294C, Kenora, Ontario, Canada.³ Canadian concurrence in the allotment at Walhalla is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

¹ We note that the petition was signed, as required by the Commission's rules. However, petitioners failed to include an affidavit verifying that the statements contained in their petition were accurate to the best of their knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's*

| | | | |
|--------------|---------|-------------|----------|
| City | Present | Channel No. | Proposed |
| Walhalla, | | | |
| North Dakota | -- | | 294C2 |

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **March 5, 1993**, and reply comments on or before **March 22, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Roger A. Anderson
Kathryn Ann Anderson
1113 Sunflower Lane, Route #1
Hazen, North Dakota 58545
(Petitioners)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3910, n.41 (1990). Petitioners are requested to rectify this omission in their comments.

² Petitioners request that they be awarded a "pioneer's preference" should Channel 294C2 be allotted to Walhalla. However, while a proposal is before the Commission to provide for a "finder's preference" in FM and TV allotment proceedings, the Commission has not taken any final action on the request. See *Reexamination of the Policy Statement on Comparative Broadcast Hearings* (GC Docket No. 92-52), 7 FCC Rcd 2664 (1992).

³ The coordinates for Channel 294C2 at Walhalla, North Dakota, are North Latitude 48-55-23 and West Longitude 98-03-11.

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before

the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.